



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 13, 1995

Ms. Kathleen Weisskopf
Assistant City Attorney
City of Arlington
P.O. Box 231
Arlington, Texas 76004-0231

OR95-593

Dear Ms. Weisskopf:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 32475.

The City of Arlington (the "city") received a request for "all parcel maps, profiles, specifications, drainage area maps, paving plans, surveys and any other information that depicts the [requestor's client's] property or the proposed taking in any manner." You claim that the requested information is excepted from disclosure under section 552.103(a) of the Government Code. You have also submitted a representative sample of the requested information that the city seeks to withhold.¹ We have considered the exception you claimed and have reviewed the sample documents.

Section 552.103(a) excepts from disclosure information:

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

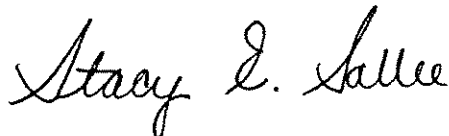
(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

The city has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. The city must meet both prongs of this test for information to be excepted under 552.103(a).

You state that the city is currently in litigation with the requestor's client in a condemnation proceeding. You have submitted to this office a copy of the Statement in Condemnation involving the requestor's client's property. After reviewing the sample documents and the Statement in Condemnation, we conclude that litigation is pending and the requested documents are related to that litigation. Therefore, the city may withhold the requested information. We note that if the opposing party in the litigation has seen or had access to any of the information in these records, there is no justification for now withholding that information from the requestor pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Government Section

SES/RHS/rho

Ref.: ID# 32475

Enclosures: Submitted documents

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(w/o enclosures)